



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA-R09-OAR-2012-0267; FRL-9730-3

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing approval of revisions to the SJVUAPCD portion of the California State Implementation Plan (SIP). This rule was proposed in the Federal Register on April 30, 2012 and concerns volatile organic compound (VOC) emissions from wine storage tanks. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act).

**DATES:** This rule is effective on [Insert date 30 days from the date of publication in the Federal Register].

**ADDRESSES:** EPA has established docket number EPA-R09-OAR-2012-0267 for this action. Generally, documents in the docket for this action are available electronically at <http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at <http://www.regulations.gov>, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential

business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Lily Wong, EPA Region IX, (415) 947-4114, wong.lily@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

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#### **I. Proposed Action**

On April 30, 2012 (77 FR 25384), EPA proposed to approve the following rule into the California SIP.

Local Agency	Rule #	Rule Title	Adopted	Submitted
SJVUAPCD	4694	Wine Fermentation and Storage Tanks	12/15/05	11/18/11 (amended submittal as adopted 08/18/11)

We proposed to approve this rule because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

## II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. We received comments from the following parties.

1. Dan Belliveau, NohBell Corporation; letter dated and received May 30, 2012.
2. Steven Colome, EcoPAS; email dated and received May 31, 2012. While these comments were received after the public comment period, EPA elected to add these comments to the docket and respond to the issues raised.

The comments and our responses are summarized below.

a. Comment: The commenters generally described their respective technologies and results to date to capture and control VOC emissions from the wine fermentation process. Both commenters stated that they believe their technologies represent reasonably available control technology (RACT) and believed this information should be considered in EPA's determination on RACT.

Response: EPA defines RACT as the "lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility." 44 FR 53761 (September 17, 1979). EPA generally considers controls that are commonly used by a significant number of sources to be reasonably available and technologically and economically feasible. RACT differs from requirements for the more stringent lowest

achievable emission rate (LAER) controls required for new and modified major sources in nonattainment areas. LAER is defined in CAA Section 171(3) and 40 CFR 51.165(a)(1)(xiii) as "the most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrate that such limitations are not achievable; or . . . the most stringent emissions limit which is achieved in practice by such class or category of stationary sources."

Information provided by the commenters would help demonstrate that these two new and emerging technologies are technically feasible on wine tanks of a certain size. However, in order to meet EPA's criteria for RACT, the use of these technologies must be demonstrated in practice by a larger number of sources and at a broader range of tank capacities. In addition, we note that the commenters' current<sup>1</sup> cost effectiveness estimates are higher than what is generally accepted for VOC RACT level controls. Therefore, while these new and emerging technologies have not been demonstrated to represent RACT at this time, they should be considered for sources where LAER is required by new source review regulations.

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<sup>1</sup> While the commenters also believe that their cost effectiveness estimates would be significantly lowered (e.g., if the control system was scaled up and optimized, or if the potential commercial value of the captured ethanol was realized), we did not take these estimates into account at this time because these scenarios have not yet been demonstrated.

In addition, what constitutes RACT can change over time as technologies once considered beyond RACT become more economically feasible and demonstrated in practice more widely. As a result, SJVUAPCD should reevaluate these technologies when subsequent RACT demonstrations are required, such as in 2014, when SJVUAPCD may need to submit a RACT SIP analysis for the 2008 8-hour ozone standard.

We also note that new and modified major sources in SJVUAPCD must demonstrate LAER in the permitting context, which California calls best available control technology (BACT). The initial steps in a BACT analysis are to identify all available technologies and eliminate those that are not technically feasible. Therefore, SJVUAPCD must consider these new technologies in all future required California BACT determinations for permitting wine fermentation tanks. EPA forwarded these comment letters to SJVUAPCD for consideration in their future BACT analyses.

b. Comment: EcoPAS stated that EPA's final approval of this version of Rule 4694 would remove the fermentation emission provisions of Rule 4694 from the SIP.

Response: Currently, there is no version of Rule 4694 approved in the SIP. Therefore, EPA approval of the amended submittal of Rule 4694 would not remove any provisions from the SIP.

We believe the commenter is specifically concerned with

SJVUAPCD's deletion of the fermentation provisions (e.g., sections 5.1, 6.1, 6.2, 6.3, 6.5, 6.6, 7.0, and other supporting sections) in its amended submittal of Rule 4694. In EPA's Technical Support Document (TSD) which accompanied our proposed approval of Rule 4694, we described our concerns with the alternative compliance provisions, which only affected the fermentation provisions. Because of EPA's concerns, the District elected to withdraw from consideration for SIP approval the wine fermentation provisions, although the fermentation provisions remain in effect at the local level. The appropriate forum to raise the commenter's concerns would have been the District's process for amending the submittal of Rule 4694. EPA is only acting on SJVUAPCD's current SIP submittal. As discussed in our TSD, EPA's approval of Rule 4694 without the fermentation provisions does not relax any SIP requirements or commitments.

### **III. EPA Action**

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the California SIP.

### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR

52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to



the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations, Ozone,  
Reporting and recordkeeping requirements, Volatile organic  
compounds.

Dated: August 30, 2012

Jared Blumenfeld,  
Regional Administrator,  
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for Part 52 continues to read as follows:

**AUTHORITY:** 42 U.S.C. 7401 et seq.

Subpart F - California

2. Section 52.220 is amended by adding paragraph (c)(416) to read as follows:

**§52.220 Identification of plan.**

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(c) \* \* \*

(416) Specified portions of the following rule were submitted on November 18, 2011 by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD).

(1) The following specified portions of SJVUAPCD Rule 4694, Wine Fermentation and Storage Tanks, adopted December 15, 2005:

(i) Section 1.0 (Purpose), except for the words "fermentation and" and "or achieve equivalent reductions from alternative emission sources";

(ii) Section 2.0 (Applicability), except for the words "fermenting wine and/or";

(iii) Section 3.0 (Definitions), paragraphs 3.1 -- Air Pollution Control Officer (APCO), 3.2 -- Air Resources Board (ARB or CARB), 3.18 -- Gas Leak, 3.19 -- Gas-Tight, 3.21 -- Must, 3.22 -- Operator, 3.27 -- Storage Tank, 3.29 -- Tank, 3.33 -- Volatile Organic Compound (VOC), 3.35 -- Wine, and 3.36 -- Winery;

(iv) Section 4.0 (Exemptions), paragraph 4.2;

(v) Section 5.0 (Requirements), paragraph 5.2 -- Storage Tanks; and

(vi) Section 6.0 (Administrative Requirements), paragraph 6.4 -- Monitoring and Recordkeeping, introductory text and paragraph 6.4.2.

(ii) Additional materials.

(A) California Air Resources Board (CARB)

(1) CARB Executive Order S-11-024, November 18, 2011, adopting specified portions of SJVUAPCD Rule 4694 as a revision to the SIP.

(B) San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD)

(1) SJVUAPCD Resolution No. 11-08-20, August 18, 2011, adopting specified portions of SJVUAPCD Rule 4694 as a revision to the SIP.

Date: 11/29/2012]